

### **31A-27a-506 Fraudulent transfers and obligations.**

(1) For purposes of this section:

(a) A "transfer":

- (i) is made when the transfer is so perfected that a bona fide purchaser from the insurer against whom applicable law permits the transfer to be perfected cannot acquire an interest in the property transferred that is superior to the interest in the property of the transferee; or
- (ii) if the transfer is not perfected as provided in Subsection (1)(a)(i) before the commencement of the delinquency proceeding, is considered made immediately before the day on which the initial filing of the petition commencing delinquency proceedings is filed.

(b) "Value" means property or satisfaction or securing of a present or antecedent debt of the insurer.

(2)

(a) If the conditions of Subsection (2)(b) are met, the receiver may avoid the following:

- (i) a transfer of an interest of the insurer in property;
- (ii) a reinsurance transaction; or
- (iii) an obligation incurred by an insurer.

(b) Subsection (2)(a) applies if:

- (i) the transfer or obligation is made or incurred on or within two years before the day on which the initial filing of a petition commencing delinquency proceedings is filed under this chapter; and
- (ii) the insurer voluntarily or involuntarily:
  - (A) makes the transfer or incurs the obligation with actual intent to hinder, delay, or defraud a person to which the insurer is or becomes indebted on or after the day on which the transfer is made or the obligation is incurred; or
  - (B) receives less than a reasonably equivalent value in exchange for the transfer or obligation.

(3) Except to the extent that a transfer or obligation voidable under this section is voidable under other provisions of this chapter, a transferee or obligee of a transfer or obligation voidable under this section that takes for value and in good faith:

(a) as the case may be:

- (i) has a lien on or may retain any interest transferred; or
- (ii) may enforce any obligation incurred; and

(b) to the extent that the transferee or obligee gave value to the insurer in exchange for the transfer or obligation.

(4) If a reinsurance transaction is avoided under this section:

- (a) the receiver shall tender to the reinsurer the value of any consideration transferred to the insurer in connection with the transaction less the amount of matured and liquidated liabilities owing by the reinsurer to the estate; and
- (b) the parties shall be returned to their relative positions before the implementation of the transaction avoided.

Enacted by Chapter 309, 2007 General Session